

The Administrator signed the following rule on December 21, 2006, and we are submitting it for publication in the *Federal Register*. While we've taken steps to ensure the accuracy of this Internet version of the rule, it's not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming *Federal Register* publication or on GPO's Web Site. You can access the *Federal Register* at: www.gpoaccess.gov/fr/index.html. When using this site, note that "text" files may be incomplete because they don't include graphics. Instead, select "Adobe Portable Document File" (PDF) files.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 86

[EPA-HQ-OAR-2006-0363; FRL_XXXX-X]

RIN 2060-AN66

Amendment to Tier 2 Vehicle Emission Standards and Gasoline Sulfur Requirements: Partial Exemption for U.S. Pacific Island Territories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: EPA is taking direct final action to exempt the three U.S. Pacific Island Territories - American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (C.N.M.I.) - from the gasoline sulfur requirements that EPA promulgated in the Tier 2 motor vehicle rule. The Governor of American Samoa petitioned us for an exemption from the Tier 2 gasoline sulfur requirement because of the potential for gasoline shortages, the added cost, and the minimal air

quality benefits the Tier 2 gasoline sulfur requirement would provide to American Samoa. Representatives of the Governors of Guam and C.N.M.I. have also requested an exemption referencing the petition submitted by American Samoa. Generally, the Far East market, primarily Singapore, supplies gasoline to the U.S. Pacific Island Territories. The Tier 2 sulfur standard effectively requires special gasoline shipments, which would increase the cost and could jeopardize the security of the gasoline supply to the Pacific Island Territories. The air quality in American Samoa, Guam, and C.N.M.I. is generally pristine, due to the wet climate, strong prevailing winds, and considerable distance from any pollution sources. We recognize that exempting the U.S. Pacific Island Territories from the gasoline sulfur standard will result in smaller emission reductions. However, Tier 2 vehicles using higher sulfur gasoline still emit 30% less hydrocarbons and 60% less NOX than Tier 1 vehicles and negative effects on the catalytic converter due to the higher sulfur levels are, in many cases, reversible. Additionally, these reduced benefits are acceptable due to the pristine air quality, the fact that gasoline quality will not change, and the cost and difficulty of consistently acquiring Tier 2 compliant gasoline. The Tier

2 motor vehicle rule also sets standards for vehicle emissions. Vehicles in use on the U.S. Pacific Island Territories will not be exempt from the Tier 2 vehicle emission standards. However, additional flexibility will be afforded due to the lack of low sulfur gasoline.

DATES: This direct final rule is effective on [insert date 90 days after publication in the Federal Register] without further notice, unless EPA receives adverse comments by [insert date 30 days after publication in the Federal Register]. If we receive adverse comments, we will publish a timely withdrawal in the Federal Register informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0363, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., N.W., Washington, DC, 20460, Attention Docket ID No. EPA-HQ-OAR-2006-0363. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk

Officer for EPA, 725 17th St. N.W., Washington, DC
20503.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0363. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA

cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., N.W., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

NOTE: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for

people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's Federal Register notice at 71 FR 38147 (July 5, 2006) or the EPA website at www.epa.gov/epahome/dockets.htm for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to www.regulations.gov are not affected by the flooding and will remain the same.

FOR FURTHER INFORMATION CONTACT: Sean Hillson, Office of Transportation and Air Quality, Transportation and Regional Programs Division, Mailcode AASMCG, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI, 48105; telephone number: (734) 214-4789; fax number: (734) 214-4052; e-mail address: Hillson.Sean@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse comment.

However, in the "Proposed Rules" section of today's Federal Register publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this direct final rule if adverse comments are filed. This rule will be effective on [insert date 90 days after publication in the Federal Register] without further notice

unless we receive adverse comment by [insert date 30 days after publication in the Federal Register] or a request for a public hearing by [insert date 15 days after publication in the Federal Register]. If we receive adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, we will publish a timely withdrawal in the Federal Register indicating which provisions are being withdrawn due to adverse comment. We may address all adverse comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule.

Today's action is also available electronically on the date of publication from EPA's Federal Register Internet web site listed below. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA Federal Register Web Site:

<http://www.epa.gov/fedrgstr/EPA-AIR/>

(Either select a desired date or use the Search feature)

The contents of this preamble are listed in the following outline:

- I. General Information
- II. Background
- III. American Samoa
- IV. Guam
- V. Commonwealth of the Northern Mariana Islands
(C.N.M.I.)
- VI. What is EPA Promulgating?
- VII. Statutory and Executive Order Reviews
- VIII. Statutory Provisions and Legal Authority
- I. General Information
- A. Does this Action Apply to Me?

This action will affect you if you produce new motor vehicles, alter individual imported motor vehicles to address U.S. regulation, or convert motor vehicles to use alternative fuels for use in the U.S. Pacific Island Territories - American Samoa, Guam, and Commonwealth of the Northern Mariana Islands (C.N.M.I.). It will also affect you if you produce, import, distribute, or sell gasoline fuel for use in the U.S. Pacific Island Territories. The following table gives some examples of entities that may have to follow the regulations. But because these are only

examples, you should carefully examine the regulations in 40 CFR parts 80 and 86. If you have questions, call the person listed in the FOR FURTHER INFORMATION CONTACT section of this preamble.

Examples of Potentially Regulated Entities	NAICS Codes ^a	SIC Codes ^b
Motor Vehicle Manufacturers	336111	3711
	336112	
	336120	
Alternative Fuel Vehicle Converters	336311	3592
	336312	3714
	422720	5172
	454312	5984
	811198	7549
	541514	8742
	541690	8931
Commercial Importers of Vehicles and Vehicle Components	811112	7533
	811198	7549
	541514	8742
Petroleum Refiners	324110	2911
Gasoline Marketers and Distributors	422710	5171
	422720	5172
Gasoline Carriers	484220	4212
	484230	4213

^aNorth American Industry Classification System (NAICS)

^bStandard Industrial Classification (SIC)

B. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI

Do not submit confidential business information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest

alternatives and substitute language for your requested changes.

- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What is the Tier 2 Rule?

The Tier 2 rule (65 FR 6697, February 10, 2000) instituted a comprehensive regulatory program designed to significantly reduce the emissions from new passenger cars and light trucks, including pickup trucks, vans, minivans, and sport-utility vehicles. These reductions provide for cleaner air and greater public health protection, primarily by reducing ozone and PM pollution. The program treats vehicles and fuels as a system, combining requirements for much cleaner vehicles with requirements for much lower

levels of sulfur in gasoline. The program phases in a single set of tailpipe emission standards that apply to all passenger cars, light trucks, and larger passenger vehicles operated on any fuel. To enable the very clean Tier 2 vehicle emission control technology to be introduced and to maintain its effectiveness, we also require reduced gasoline sulfur levels. The reduction in sulfur levels contributes directly to cleaner air in addition to its beneficial effects on vehicle emission control systems. Refiners have installed additional refining equipment to remove sulfur in their refining processes. Importers of gasoline are required to import and market only gasoline meeting the sulfur standards. These standards currently apply to the U.S. Pacific Island Territories - American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (C.N.M.I.). However, these Territories have received enforcement discretion¹ from the Office of Enforcement and Compliance Assurance which is applicable until November 1, 2007, or once the final rule becomes effective, whichever is earlier.

B. Summary of American Samoa's Petition

¹ EPA, "Exercise of Enforcement Discretion for Gasoline Sulfur Regulations for the Commonwealth of the Northern Mariana Islands, American Samoa, and the Territory of Guam", October 30, 2006.

Section 325(a)(1) of the Clean Air Act² states in relevant part:

Upon petition by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Administrator is authorized to exempt any person or source or class of persons in such territory from any requirement under this chapter other than section 7412 of this title or any requirement under section 7410 of this title or part D of subchapter I of this chapter necessary to attain or maintain a national primary ambient air quality standard. Such exemption may be granted if the Administrator finds that the compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological or economic factors of such territory, or such other local factors as the Administrator deems significant.

Pursuant to Section 325(a)(1) of the Clean Air Act, the Honorable Togiola Tulafono, Governor of American Samoa, petitioned³ the EPA to exempt all persons in American Samoa from the Tier 2 gasoline sulfur requirements promulgated by the EPA pursuant to Section 211(c)(1) of the Clean Air Act and set forth at 40 CFR Part 80, Subpart H ("Gasoline Sulfur Regulations"). According to the petition, compliance with these requirements in American Samoa is unreasonable due to the unique geographical, meteorological

² 42 U.S.C. 7625-1(a)(1).

³ Tulafono, T., Governor of American Samoa, "Petition for Exemption from the Gasoline Sulfur Regulations", February 10, 2004.

and economic factors of the Territory. The reasons supporting this petition include the following:

- Transportation costs dictate that gasoline be supplied to American Samoa from Far East markets, and the imposition of the rules would cause the American Samoan market to be even less attractive to foreign suppliers in an already limited market and, therefore, compromise the security of the American Samoa gasoline supply;

- Compliance with the Tier 2 gasoline sulfur regulations would result in higher prices for gasoline in an already fragile economy, resulting in added economic hardship to American Samoan residents, the majority of which live below the poverty level; and

- The isolation and small volumes of gasoline used in American Samoa obviate any measurable danger to the environment with respect to an exemption for American Samoa from the Tier 2 rule.

C. Rationale for Guam and C.N.M.I. Tier 2 Exemption

Representatives of the Governors of C.N.M.I. and Guam have also filed requests^{4,5} for exemption from the Tier 2

⁴ Rabauliman, F., Director of the C.N.M.I. Division of Environmental Quality, "Request for Exemption from Gasoline Sulfur Requirements", August 10, 2006.

gasoline sulfur standards. These territories have referenced the American Samoa petition as they have the same fuel suppliers and similar geographical, meteorological and economic factors as American Samoa. Gasoline is transported to the U.S. Pacific Island Territories from Far East markets. Imposing the Tier 2 regulations on the Territories would make the market less attractive to foreign suppliers. This compromises the security of the gasoline supply. One supplier has already pulled out of the market due to difficulty in supplying compliant gasoline.

III. American Samoa

A. American Samoa's Geography and Climate

American Samoa is a group of five volcanic islands and two coral atolls. It is located in Polynesia, approximately 2300 miles southwest of Hawaii and 1600 miles north of New Zealand. American Samoa is an unincorporated Territory of the United States.

American Samoa is comprised of approximately 76 square miles, most of which is mountainous. Over 96 percent of the population lives on the largest island, Tutuila, which is approximately 53 square miles. The small island of

⁵ Soto, A., Acting Administrator of the Guam Environmental Protection Agency, "Request for Exemption from Gasoline Sulfur Requirements", August 14, 2006.

Annu'u lies near the east end of the Tutuila. The Manu's Islands (Ta'u, Ofu and Olesaga) are located approximately 60 miles east of Tutuila. Swains Island and the uninhabited Rose Atoll are the two remaining islands in the American Samoan group.

American Samoa's closest neighbor is Western Samoa, lying about 60 miles to the west. There are no major population centers in the vicinity of American Samoa - the nearest is New Zealand, 1600 miles away.

American Samoa has a tropical maritime climate, with abundant rain, winds, and warm, humid days and nights. Rainfall is about 125 inches a year near the airport, but varies greatly over small distances because of the mountainous topography. The mean annual temperature is approximately 80 degrees Fahrenheit and remains fairly constant throughout the year. The prevailing winds throughout the year are the Easterly Trades. The average wind speed is 12.1 miles per hour, and does not vary to great degree throughout the year. The lowest monthly average wind speeds occur in February, March and April and average about 8.5 miles per hour.

B. What is the Air Quality Impact for American Samoa?

Due to the wet climate, strong prevailing winds, and the remoteness of American Samoa, the air quality is generally pristine. It is in attainment with EPA's air quality standards, including the National Ambient Air Quality Standards for ozone and SO₂. Exempting American Samoa from the Tier 2 gasoline sulfur standards would not cause an increase in emissions. As noted above, American Samoa has received enforcement discretion for the Tier 2 gasoline sulfur standards from the onset of the program and therefore the gasoline sent to American Samoa has not been required to meet the Tier 2 sulfur levels. Emissions from older vehicles will remain unchanged. Tier 2 vehicles using high sulfur gasoline will be cleaner than Tier 1 vehicles. Tier 2 vehicles using gasoline with 330 ppm sulfur emit 30% less hydrocarbons and 60% less NO_x than Tier 1 vehicles⁶. While this rule will lead to a smaller reduction in emissions than would occur if the Tier 2 sulfur regulations are required, American Samoa's current air quality does not require further reductions. Because of American Samoa's remoteness, there are no cross border issues.

C. Special Market Limitations for American Samoa

⁶ EPA, "EPA Staff Paper on Gasoline Sulfur Issues", May 1, 1998, EPA420-R-98-005.

American Samoa's gasoline market has unique characteristics due to American Samoa's remoteness. It is not realistic to supply American Samoa from the mainland United States. Consequently, the majority of American Samoa's gasoline is supplied from the Far East market (Singapore and Australia).

The American Samoa petroleum market poses unique challenges, and suppliers periodically withdraw from the market. The amount of fuel purchased by American Samoa is so small that American Samoa is only a minor part of the business of its current suppliers. These suppliers may not be willing to modify their refineries to comply with the EPA's Tier 2 gasoline sulfur requirements simply to supply the small American Samoa market. For instance, Australia currently enforces a gasoline sulfur standard higher than the Tier 2 standard and Singapore does not regulate gasoline sulfur content⁷.

In addition, American Samoa is economically challenged. According to the 2000 U.S. Census, 61 percent of American Samoans lived below the poverty level⁸. Its 2000 per capita gross domestic product purchasing power parity was

⁷ International Fuel Quality Center, "Asia/Australasia: 2005 Regional Fuel Quality Overview and Outlook for 2006", February 23, 2006.

⁸ U.S. Census Bureau, "American Samoa: 2000 Social, Economic, and Housing Characteristics", 2001.

\$5,825, compared to the 2005 U.S. per capita GDP purchasing power parity of \$41,800⁹. Revenue transfers from the U.S. government add substantially to its economic well-being. American Samoa's economic activity is primarily fishing and processing and canning of tuna.

IV. Guam

A. Guam's Geography and Climate

Guam is the southern-most island in the Marianas Archipelago. It is located in Polynesia, approximately 3,700 miles west-southwest of Honolulu and 1,550 miles south of Tokyo. The island is about 28 miles long and between 4 and 8.5 miles wide, with a total land area of 209 square miles, about three times the size of Washington DC. It has a tropical climate with consistently warm and humid weather and westward prevailing trade winds. There is no land mass downwind of Guam within 600 miles.

B. What is the Air Quality Impact for Guam?

Guam is in attainment with the primary NAAQS, with the exception of sulfur dioxide in two areas. This action is not expected to have any significant impact on the ambient air quality status of Guam, including the status of the two areas designated as nonattainment for sulfur dioxide. Both

⁹ Central Intelligence Agency, "World Fact Book", June 2006.

areas are designated nonattainment for sulfur dioxide as a result of monitored and modeled exceedences in the 1970's prior to implementing changes to power generation facilities.

In the 1990's both plants were rebuilt, upgrading their emission controls. Guam has submitted a redesignation request to EPA. That pending redesignation request shows that they are now in attainment. An emissions inventory shows that the power plants are the major source of SO₂ on Guam. Both plants are on the western side of the island. The Trade Winds blow persistently from east-to-west, further lessening the impact of the SO₂ emissions on the people of Guam from the power plants.

Mobile sources, like cars, are a minor contributor to the SO₂ emission budget. Exempting Guam from the Tier 2 gasoline sulfur and vehicle emission standards would not cause an increase in emissions. Guam has received enforcement discretion for the Tier 2 gasoline sulfur standards from the onset of the program and therefore the gasoline sent to Guam has not been required to meet the Tier 2 sulfur levels. Emissions from older vehicles will remain unchanged. Tier 2 vehicles using high sulfur gasoline will be cleaner than Tier 1 vehicles. Tier 2 vehicles using gasoline with 330 ppm sulfur emit 30% less

hydrocarbons and 60% less NO_x than Tier 1 vehicles. While this rule will lead to a smaller reduction in emissions than would occur if the Tier 2 sulfur regulations are required, Guam's current air quality does not require further reductions. Because of Guam's remoteness, there are no cross border issues

C. Special Market Limitations for Guam

The history of the Guam gasoline market has unique characteristics due to its remoteness. It is not realistic to supply Guam from the mainland United States. Consequently, the majority of Guam's gasoline is supplied from Singapore refineries. The shipments to Guam are in relatively small quantities because the island lacks the economy of scale for bigger bulk purchases. These suppliers may not be willing to modify their refineries to comply with the EPA's Tier 2 gasoline sulfur standard simply to supply the small Guam market. As stated earlier, Singapore currently does not regulate gasoline sulfur content.

In addition, Guam is economically challenged. According to the 2000 U.S. Census, Guam's population was 148,060 with 23% living below poverty¹⁰. Its 2005 per capita GDP purchasing power parity was \$15,000, compared to the U.S.

¹⁰ U.S. Census Bureau, "Guam: 2000 Social, Economic, and Housing Characteristics", 2003.

per capita GDP purchasing power parity in 2005 of \$41,800¹¹. Guam's economy depends significantly on U.S. military spending and on revenue from the tourism industry. Most food and industrial goods are imported, about 75% from the U.S.

V. Commonwealth of the Northern Mariana Islands
(C.N.M.I.)

A. C.N.M.I. Geography and Climate

The C.N.M.I. consists of 14 islands of volcanic origin that extend in a general north-south direction for 388 nautical miles. It lies in the Western part of the Pacific Ocean about 1,150 miles south of Tokyo, 108 miles north of Guam, and 5,280 miles from the U.S. mainland. The land area is 176.5 square miles, about 2.5 times the size of Washington DC. It has a tropical climate with consistently warm and humid weather and westward prevailing trade winds. According to the U.S. Census Bureau, in 2000 the population was 68,775, with population centers primarily on the western side of Saipan, and to a much lesser extent on Tinian and Rota. C.N.M.I. has approximately 200 miles of roads, of which approximately 50 percent are paved.

B. What is the Air Quality Impact for C.N.M.I.?

¹¹ Central Intelligence Agency, "World Fact Book", June 2006.

The concentration of development on the west side of the islands, meteorology (westward trade winds), and lack of heavy industry all have a beneficial impact on C.N.M.I.'s air quality. C.N.M.I. is in attainment with EPA's air quality standards, including the National Ambient Air Quality standard for ozone and SO₂. Exempting C.N.M.I. from the Tier 2 gasoline sulfur and vehicle emission standards would not cause an increase in emissions. C.N.M.I. has received enforcement discretion for the Tier 2 gasoline sulfur standards from the onset of the program and therefore the gasoline sent to C.N.M.I. has not been required to meet the Tier 2 sulfur levels. Emissions from older vehicles will remain unchanged. Tier 2 vehicles using high sulfur gasoline will be cleaner than Tier 1 vehicles. Tier 2 vehicles using gasoline with 330 ppm sulfur emit 30% less hydrocarbons and 60% less NO_x than Tier 1 vehicles. While this rule will lead to a smaller reduction in emissions than would occur if the Tier 2 sulfur regulations are required, C.N.M.I.'s current air quality does not require further reductions. Because of its remoteness, there are no cross border issues.

C. Special Market Limitations for C.N.M.I.

The history of the C.N.M.I. gasoline market has unique characteristics due to its remoteness. It is not realistic

to supply C.N.M.I. from the mainland United States. Consequently, the majority of C.N.M.I. gasoline is supplied from the Far East market where gasoline sulfur content may be unregulated or does not meet Tier 2 levels. Gasoline is shipped from Singapore to Guam and then to C.N.M.I. in one ship. Several factors impact the wholesale pricing of gasoline in C.N.M.I., including small volumes, a lack of purchasing power leverage, high transportation costs, and lack of competition. The Tier 2 gasoline sulfur requirements would make the C.N.M.I. market even less attractive to suppliers.

In addition, C.N.M.I. is economically challenged, with 46% of the population living below the poverty level in 2000¹². The GDP per capita purchasing power parity in 2000 was \$12,500, compared to the United States per capita GDP purchasing power parity in 2005 of \$41,800¹³. The economy benefits substantially from financial assistance from the United States, but this assistance has declined as locally generated government revenues have grown. Chief sources of income are tourism and garment production.

VI. What is EPA Promulgating?

¹² U.S. Census Bureau, "Commonwealth of the Northern Mariana Islands: 2000 Social, Economic, and Housing Characteristics", 2003.

¹³ Central Intelligence Agency, "World Fact Book", June 2006.

A. Gasoline Sulfur Requirements

1. Standards

We are exempting American Samoa, Guam, and C.N.M.I. from the Tier 2 gasoline sulfur standard due to the high economic burden of compliance, isolated nature of the territories, both in terms of gasoline importation and pollution transport, and minimal air quality effects. American Samoa, Guam, and C.N.M.I. have each filed a request for exemption from the Tier 2 gasoline sulfur standards. American Samoa has also submitted a petition providing justification for the exemption, which Guam and C.N.M.I. have referenced in their requests as they have the same fuel suppliers and similar geographical, meteorological, and economic factors as American Samoa.

2. Rationale

EPA's Gasoline Sulfur Regulations were published on February 10, 2000. The rules are designed to lower sulfur levels in gasoline in order to reduce emissions from mobile sources of sulfur compounds, ozone, air toxics, and particulate matter. The rules currently apply to the U.S. Pacific Island Territories (65 FR 6713, f.n. 24, February 10, 2000). However, the U.S. Pacific Island Territories have received enforcement discretion of the Tier 2 gasoline sulfur standards until November 1, 2007.

Compliance with the EPA's Tier 2 gasoline sulfur standards would result in undue economic hardship in the U.S. Pacific Island Territories. All three of the territories lack internal petroleum supplies and refining capabilities and rely on long distance imports. Given their remote location from Hawaii and the U.S. mainland, most petroleum products are imported from East Rim nations, particularly Singapore where no gasoline sulfur regulations are in place.

The economies of the Territories are underdeveloped compared with the U.S. mainland with poverty rates ranging between 23% and 61%. Gasoline must be imported over long distances and in small cargo parcels. This makes the cost of gasoline in the Pacific Island Territories higher than on the mainland United States, exclusive of the effects of taxes. Higher gasoline prices adversely affect the economies of the Territories.

Imposition of the low sulfur gasoline standards would result in a further limitation in potential suppliers to the U.S. Pacific Island Territories. Suppliers will either be dissuaded from supplying the Territories at all, or they would charge prices that would make the importation of the gasoline economically impracticable for its residents. One supplier has pulled out of the market in American Samoa

because they were unable to provide compliant gasoline. The fact that a major supplier of gasoline has pulled out of the market speaks to the impracticality of supplying Tier 2 gasoline to the Territories.

B. Vehicle Emission Standards

1. Standards

We are not exempting American Samoa, Guam, and C.N.M.I. from the Tier 2 vehicle emission standards. However, we are providing additional flexibilities for Tier 2 vehicles since low sulfur gasoline is unavailable. These flexibilities are similar to the flexibilities which EPA provided for 1999-2003 model vehicles meeting National Low Emission Vehicle (NLEV) emission standards and 2004-2007 model year vehicles meeting either Interim non-Tier 2 or Tier 2 vehicle emission standards. Under current EPA regulations, these flexibilities are set to expire at the end of the 2007 model year. Today's action extends the flexibilities to 2008 and later model year vehicles introduced into commerce in American Samoa, C.N.M.I., and Guam. The flexibilities 1) allow additional preconditioning prior to conducting exhaust emission tests (to remove sulfur deposits on the catalyst and emission control system components) and 2) allow special OBD system

considerations to account for higher levels of sulfur present in gasoline.

2. Sulfur effects on Tier 2 and NLEV vehicle exhaust emissions and OBD systems

The effects of sulfur levels in gasoline on vehicle emissions and OBD systems have been well documented in recent years in various Society of Automotive Engineer (SAE) papers and other references. A discussion of sulfur effects on vehicle emissions and OBD systems can be found in the Tier 2 final rule (65 FR 6729, February 10, 2000). In brief, sulfur in gasoline has a negative impact on vehicle emissions, reducing the effectiveness of the catalytic converter. Sulfur compounds attach to some of the precious metal sites in the catalyst, neutralizing some of the catalytic action. Tier 2 and NLEV vehicles are more sensitive to sulfur poisoning than Tier 1 and Tier 0 vehicles. The amount of reduced activity depends on many factors such as the catalyst precious metal formulation, the oxygen storage capacity of the catalyst, the catalyst location, catalyst temperature environment, the air/fuel calibration of the engine, vehicle speed, vehicle load, etc.

Data presented in the Tier 2 final rule (65 FR 6729, February 10, 2000) indicates that for vehicles meeting LEV

emission standards, NMHC and NO_x emissions can increase by approximately 150 percent and 50 percent, respectively, on the FTP (city) test if the vehicle was operated on gasoline containing 330 ppm sulfur. While sulfur poisoning is reversible, the amount of reversibility also depends on many factors. Sulfur can be removed from some catalysts by operating the vehicle with a rich exhaust (absence of oxygen) while the catalyst experiences a high temperature environment (above 700° C).

As discussed in the Tier 2 final rule (65 FR 6729, February 10, 2000), sulfur poisoning has a potential to adversely affect the on-board diagnostic (OBD) system of the vehicle. First, sulfur poisoning can impair the decisions made by the OBD system, and affect the ability of the OBD system to accurately detect catalyst efficiency problems. For example, the OBD system could operate properly on low-sulfur gasoline, but falsely indicate sulfur-induced passes when exposed to high sulfur gasoline. Second, sulfur poisoning has a potential to affect consumer confidence in the OBD system itself. For example, if the OBD system were to detect a substantially higher rate of (sulfur induced) catalyst efficiency problems when operating on high sulfur gasoline, the more frequent illumination of the OBD warning light could lead to a loss

of consumer confidence in the OBD system itself. Thus, consumers might become inclined to ignore the OBD warning light and drive potentially high emitting vehicles with emission-related problems unrelated to sulfur in gasoline.

3. Discussion of Vehicle Requirements

Today's action extends the flexibilities of Tier 2 OBD and in-use testing requirements while allowing American Samoa, Guam, and C.N.M.I. to use in-use fuels with sulfur levels above the Tier 2 requirements. We believe that it is appropriate to retain the Tier 2 vehicle emission standards for many reasons, including the following:

a. Exhaust emission benefits

EPA Tier 2 emission standards are significantly lower than Tier 1 emission standards. For example, Tier 1 exhaust emission standards for passenger cars are approximately 5-6 times higher than Tier 2 standards. Tier 1 exhaust emission standards for large light-duty trucks and medium duty passenger vehicles are approximately 12 times higher than Tier 2 emission standards. Although Tier 2 vehicles operating in American Samoa, Guam, and C.N.M.I. on high sulfur gasoline would not be expected to achieve the same emissions performance as Tier 2 vehicles operated on low sulfur fuel, the emission reductions realized by Tier 2 vehicles even when operating on high sulfur fuel

remain significant relative to a fleet of Tier 1 vehicles operating on such fuels. As noted above, Tier 2 vehicles using gasoline with 330 ppm sulfur emit 30% less hydrocarbons and 60% less NO_x than Tier 1 vehicles.

b. Evaporative emission benefits and other benefits

EPA Tier 2 evaporative emission standards are approximately 50 percent lower than Tier 1 evaporative emission standards (a reduction which is unaffected by the sulfur level of in-use gasoline). Other beneficial requirements of Tier 2 regulations include extending the passenger car useful life mileage from 100,000 miles to 120,000 miles; eliminating redundant idle CO emission standards for trucks; eliminating adjusted loaded weight (ALVW) test requirements for heavy light-duty trucks; reducing the Supplemental Federal Test Procedure emission standards; and requiring vehicles to have leak-free exhaust systems.

c. No significant in-use testing problems to date

EPA conducts "as received" in-use surveillance tests on approximately 50 classes of vehicles each year. Three vehicles are normally tested in each class, for a total of approximately 150 vehicles per year. Although EPA tests have been instrumental in several emission-related recalls, we have found that the vast majority of 1999 to 2004 model

year vehicles comply with the applicable NLEV/Tier 2 emission standards (even though low sulfur fuel was not available during much of this period). In some cases, the "as received" emission test failed to comply with applicable emission standards and the vehicle was retested after performing additional (sulfur removal) preconditioning. For the majority of these retests, emissions changed very little, however in one case, NO_x emissions decreased by approximately 50 percent. There have been no sulfur-related OBD failures to date. Beginning in the 2005 calendar year, automobile manufacturers were also required to perform "as received" in-use testing on approximately 1500 vehicles per year. The results of the manufacturer tests generally agree with the results of the EPA tests. The manufacturer tests also showed a high level of compliance with the NLEV and Tier 2 emission standards and no sulfur-related OBD problems. A list of vehicle recalls is available at <http://www.epa.gov/otaq/recall.htm>.

During the time when EPA and manufacturers were conducting their in-use tests on NLEV and Tier 2 vehicles, the nationwide average sulfur levels of gasoline in the United States ranged from approximately 300 ppm in 1999 to 80 ppm in 2004. We note that sulfur levels averaged 300

ppm in 2002 and 130 ppm in 2004 in the Detroit, Michigan area (where test vehicles were recruited for all EPA tests and many manufacturer tests).

While EPA believes that the Tier 2 vehicle standards should continue to apply for vehicles introduced in American Samoa, Guam, and C.N.M.I., we believe that the pre-existing flexibilities provided for vehicles that are exposed to high sulfur gasoline should be extended for vehicles introduced in these Territories. Flexibilities provided in the Tier 2 rule 1) allow additional preconditioning prior to conducting exhaust emission tests (to remove sulfur deposits on the catalyst and emission control system components) and 2) allow special OBD system considerations to account for sulfur which is present in gasoline. The specific requirements of these flexibilities are found in the current regulations (40 CFR 86.1806-05(d) and 40 CFR 86.1845-04(a)), and are applicable to vehicles up to the 2007 model year. The revised regulations provided with today's action extend these provisions beyond the 2007 model year for vehicles in American Samoa, C.N.M.I., and Guam. The flexibility to allow additional preconditioning prior to emission testing is being extended to accommodate any possible emission testing which may be performed on American Samoa, Guam, or C.N.M.I. vehicles.

The OBD flexibilities are being extended (even though current data indicate that they will probably not be needed) because EPA cannot conclude with certainty that they will not be needed for future technology vehicles.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. This rule does not create new requirements. Its purpose is to relieve a burden imposed on the three U.S. Pacific Island Territories.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and

maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small

business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule would exempt the three U.S. Pacific Island Territories -- American Samoa, Guam and the Commonwealth of the Northern Mariana Islands -- from the Tier 2 rule for gasoline sulfur requirements and extend related existing flexibilities to the vehicle emission standards for the three territories. It does not create new requirements. Its purpose is to relieve a burden imposed on the three U.S. Pacific Island Territories. We have therefore concluded that today's rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal

agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying

potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This rule imposes no enforceable duty on any State, local or tribal governments or the private sector. It does not create new requirements. Its purpose is to relieve a burden imposed on the three U.S. Pacific Island Territories.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255 August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution

of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of the U.S. Pacific Island Territories in developing this rule. A summary of the concerns raised during that consultation and EPA's response to those concerns is provided in previous sections of this preamble.

F. Executive Order 13175: Consultation and
Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This rule does not have tribal implications, as specified in Executive Order 13175. This

rule would exempt the three U.S. Pacific Island Territories--American Samoa, Guam and the Commonwealth of the Northern Mariana Islands--from the Tier 2 rule for gasoline sulfur requirements and extend related existing flexibilities to the vehicle emission standards for the three territories. It applies only to the three U.S. Pacific Island Territories. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

Executive Order 13045: "Protection of Children from Environmental health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety

risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through

OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective [insert date 90 days after publication in the Federal Register].

VIII. Statutory Provisions and Legal Authority

Statutory authority for today's final rule is found in the Clean Air Act, 42 U.S.C. 7401 et seq., in particular, sections 325, 211 and 202 of the Act, 42 U.S.C. 7521. This rule is being promulgated under the administrative and procedural provisions of Clean Air Act section 307(d), 42 U.S.C. 7607(d).

List of Subjects

40 CFR Part 80

Environmental protection, Administrative practice and procedure, Gasoline, Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Motor vehicle pollution.

Dated: _____

Stephen L. Johnson,

Administrator.

For the reasons set forth in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 80 - REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545, and 7601(a).

Subpart H - [Amended]

2. A new § 80.382 is added to Subpart H to read as follows:

§ 80.382 What requirements apply to gasoline for use in American Samoa, Guam and the Commonwealth of the Northern Mariana Islands?

The gasoline sulfur standards of §§ 80.195 and 80.240(a) do not apply to gasoline that is produced, imported, sold, offered for sale, supplied, offered for supply, stored, dispensed, or transported for use in the Territories of Guam, American Samoa or the Commonwealth of the Northern Mariana Islands, provided that such gasoline is:

(a) Designated by the refiner or importer as high sulfur gasoline only for use in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands;

(b) Used only in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands;

(c) Accompanied by documentation that complies with the product transfer document requirements of § 80.365; and

(d) Segregated from non-exempt high sulfur fuel at all points in the distribution system from the point the fuel is designated as exempt fuel only for use in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands,

while the exempt fuel is in the United States but outside these Territories.

PART 86 -- CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

3. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart S - [Amended]

4. Section 86.1806-05 is amended by revising paragraph (d)(2) to read as follows:

§ 86.1806-05 On-board diagnostics.

* * * * *

(d) * * *

(2)(i) For interim non-Tier 2 and Tier 2 LDV/LLDTs and HLDT/MDPVs produced through the 2007 model year, upon a manufacturer's written request, EPA will consider allowing the use of an on-board diagnostic system during the certification process that functions properly on low-sulfur gasoline but indicates sulfur-induced passes when exposed to high sulfur gasoline. After the 2007 model year, this provision can be used only for interim non-Tier 2 and Tier 2 LDV/LLDTs and HLDT/MDPVs introduced into commerce in American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, but this provision only can be used for

such vehicles in any of those locations if low sulfur gasoline is determined by the Administrator to be unavailable in that specific location.

(ii) For interim non-Tier 2 and Tier 2 LDV/LLDTs and HLDT/MDPVs, if vehicles produced through the 2007 model year exhibit illuminations of the emission control diagnostic system malfunction indicator light due to high sulfur gasoline, EPA will consider, upon a manufacturer's written request, allowing modifications to such vehicles on a case-by-case basis so as to eliminate the sulfur induced illumination. After the 2007 model year, this provision can be used only for interim non-Tier 2 and Tier 2 LDV/LLDTs and HLDT/MDPVs introduced into commerce in American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, but this provision only can be used for such vehicles in any of those locations if low sulfur gasoline is determined by the Administrator to be unavailable in that specific location.

* * * * *

5. Section 86.1845-04 is amended by revising paragraph (a)(3) to read as follows:

§ 86.1845-04 Manufacturer in-use verification testing requirements.

(a) * * *

(3) Upon a manufacturer's written request, prior to in-use testing, that presents information to EPA regarding pre-conditioning procedures designed solely to remove the effects of high sulfur in gasoline from vehicles produced through the 2007 model year, EPA will consider allowing such procedures on a case-by-case basis. EPA's decision will apply to manufacturer in-use testing conducted under this section and to any in-use testing conducted by EPA. Such procedures are not available for complete HDVs. After the 2007 model year, this provision can be used only for in-use vehicles in American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, but this provision only can be used for such vehicles in any of those locations if low sulfur gasoline is determined by the Administrator to be unavailable in that specific location.

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6. Section 86.1846-01 is amended by revising paragraph (a)(4) to read as follows:

§ 86.1846-01 Manufacturer in-use confirmatory testing requirements.

(a) * * *

(4) Upon a manufacturer's written request, prior to in-use testing, that presents information to EPA regarding pre-conditioning procedures designed solely to remove the

effects of high sulfur in gasoline from vehicles produced through the 2007 model year, EPA will consider allowing such procedures on a case-by-case basis. EPA's decision will apply to manufacturer in-use testing conducted under this section and to any in-use testing conducted by EPA. This provision does not apply to heavy-duty vehicles and engines. After the 2007 model year, this provision can be used only for in-use vehicles in American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, but this provision only can be used for such vehicles in any of those locations if low sulfur gasoline is determined by the Administrator to be unavailable in that specific location.

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